



PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

93-3-513RCE2

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on _____

Signature _____

Typed or printed name _____

Application Number

09/385,299

Filed

August 30, 2009

First Named Inventor

Ali MOSLEH et al.

Art Unit

2159

Examiner

Somers, Marc S.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record.

Registration number 36,743

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Anthony J. Lombardi
Reg. No. 53,232
Signature

For

Jeffrey A. Berkowitz
Typed or printed name

202-408-4000
Telephone number

July 31, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT
Customer No. 25,537
Attorney Docket No. 93-3-513RCE2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Ali MOSLEH et al.)	Group Art Unit: 2159
)	
Application No.: 09/385,299)	Examiner: Somers, Marc S.
)	
Filed: August 30, 1999)	
)	
For: METHOD AND APPARATUS FOR)	Confirmation No.: 8955
INTEGRATED COMMUNICATION)	
SERVICES PROVISIONING FOR)	
HEALTH CARE COMMUNITY)	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request a pre-appeal brief review of the Final Office Action mailed April 2, 2009, the period for response to which has been extended through August 2, 2009, by a Petition for Extension of Time of one month and fee payment filed concurrently herewith. This Request is being filed concurrently with a Notice of Appeal.

I. Requirements For Submitting a Pre-Appeal Brief Request for Review

Applicants have met each of the requirements for a pre-appeal brief review of the rejections set forth in the Final Office Action mailed April 2, 2009 ("FOA"). The application has been at least twice rejected. Applicants have filed a Notice of Appeal with this Request, and have not yet filed an Appeal Brief. Lastly, Applicants submit a Pre-Appeal Brief Request for Review that is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. See Official Gazette Notice, July 12, 2005. Therefore, Applicants request review of the Examiner's rejections in the FOA.

REMARKS

Claims 1-17 and 30-54 remain pending in this application. In the Advisory Action mailed June 8, 2009 ("AA"), the Examiner maintained the 35 U.S.C. § 103(a) rejections.

Applicants respectfully traverse the rejection of claims 7, 9, 10, 12, 15, 16, 36, 38, 39, 41, 44, and 45 under 35 U.S.C. § 103(a) as being unpatentable over *Ballantyne* in view of *Cohn* because a *prima facie* case of obviousness has not been established with respect to the claims.

Independent claim 7 recites a method of accessing an information system using a portable access device including, among other steps, "establishing a communication link between said portable access device and said network server using a communication channel that is **selected based on said communication profile and a location of said portable access device with respect to said network server**, wherein said communication channel is selected from the group consisting of: local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN)," (emphasis added). *Ballantyne* and *Cohn* do not teach, suggest, or render obvious at least these features of claim 7.

Ballantyne discloses a master library (ML) 2 that is connected to a nursing care station and/or a bedside patient care station (PCS) 8, via a fiber optical or coaxial cable 4. (*Ballantyne*, Figure 1; and col. 11, lines 12-27). ML 2 of *Ballantyne* utilizes a coaxial cable to transmit data to PCS 8 and network channels in *Ballantyne* constitute different spectrums of frequency of the coaxial cable. (*Ballantyne*, col. 9, lines 28-46). Moreover, PDA 10, in *Ballantyne*, "automatically transfers the modified health record or portions thereof to the PCS via the wireless/IR communications link." (*Ballantyne*, col. 12, lines 35-37).

Cohn is directed to "a communication system 10 [that] maintains a universal database of all users of the communications system and their individual communications profiles including the various media in which the users can send and receive messages. For example, a single user may control and receive communications using an electronic mail facility, a voice mail facility, a facsimile facility and a video facility." (*Cohn*, col. 7, line 62-col. 8, line 7). In *Cohn*, network hubs 12, 14, and 16 use the universal database to

translate a message in accordance with the communication profiles and the translated message is then routed to a destination facility. (*Cohn*, col. 8, line 6-col. 9, line 12).

Thus, even is the teachings of *Ballantyne* and *Cohn* are considered in combination, such a combination would not teach or suggest "establishing a communication link . . . using a communication channel that is selected based on said communication profile and a location of said portable access device with respect to said network server," as recited in claim 7. As conceded on page 4 of the FOA, there is no selection of a communication channel, from a group, based on "a **communication profile and a location** of said portable access device with respect to said network server," in *Ballantyne*. To the contrary there is no need to select, from a group, a "communication channel" based on a communication profile and a location of said portable access device, in *Ballantyne*, because *Ballantyne* specifically discloses using a coaxial cable to establish communication between PCS 8 and ML2, and specifically using wireless/IR communications link to transfer data from PDA 10 to PCS 8.

Cohn discloses the use of communication profiles to translate and route messages to a destination facility, but does not teach or suggest selecting a communication channel, from a group, based on "a communication profile and a location of said portable access device with respect to said network server," as recited in claim 7. There is no disclosure in both *Ballantyne* and *Cohn* of selecting a communication channel based on **both** "a communication profile and **a location of said portable access device with respect to said network server**," (emphasis added) as recited in claim 7.

Moreover, despite acknowledging the differences between *Ballantyne* and the elements of claim 7, the Examiner relies on *Ballantyne* in the rejection of claim 7. The FOA and AA state:

The rejection in the previous Office Action **did not rely on** the definition of a "communication channel" as described by *Ballantyne* in the rejection and the mere fact that **Ballantyne describes a "communication channel" that appears to be different from the "communication channel" as described by the applicant's** specification does not change the fact that *Ballantyne* teaches the claim limitations as described in the 35 USC 103(a) rejection. (Emphasis added). (FOA, page 21 and 22; AA, page 2).

As acknowledged by the Examiner, the “channels” of *Ballantyne* are different from the claimed “communication channel” and, accordingly, *Ballantyne* does not teach, suggest, or render obvious the claimed “communication channel.” The network channels in *Ballantyne* are different spectrums of frequency of a coaxial cable and are **not** selected from a “**group consisting of:** local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN),” as recited in claim 7. (*Ballantyne*, col. 5, lines 23-25). Further, *Cohn* discloses determining whether to transmit a message via one of electronic mail facility, a voice mail facility, a facsimile facility and a video facility, and does **not** disclose selecting a communication channel from a “**group consisting of:** local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN),” (emphasis added) as recited in claim 7.

Thus, even if combined, *Ballantyne* and *Cohn* fail to teach, suggest, or render obvious “using a communication channel that is **selected based on said communication profile and a location of said portable access device** with respect to said network server, wherein said communication channel is selected from the group **consisting of:** **local wireless LAN, remote wireless LAN, wireline LAN, and Public Switched Telephone Network (PSTN),**” (emphasis added) as recited in claim 7.

No *prima facie* case of obviousness has been established for at least the reason that the FOA and the AA have not given patentable weight to all the elements of claim 7 and have mischaracterized the references. Accordingly, for at least the above reasons, the FOA and the AA have not established a *prima facie* case of obviousness of claim 7. Thus, the rejection of claim 7 under 35 U.S.C. § 103(a) should be withdrawn.

Independent claims 12, 36, and 41 are also allowable over *Ballantyne* and *Cohn* for at least reasons similar to those presented above for claim 7. Claims 9, 10, 15, 16, 38, 39, 44, and 45 are also allowable at least due to their dependence from one of the independent claims.

Accordingly, reconsideration and withdrawal of this rejection of claims 7, 9, 10, 12, 15, 16, 36, 38, 39, 41, 44, and 45 under 35 U.S.C. § 103(a) is therefore respectfully requested and deemed appropriate.

Applicants respectfully traverse the rejections of claims 1-3, 5, 8, 13, 30-32, 34, 37, 42, 47, and 49 under 35 U.S.C. § 103(a) as being unpatentable over *Ballantyne* in view of

Cohn and further in view of *Ishizuka*; claims 11, 14, 17, 40, 43, 46, and 51-53 under 35 U.S.C. § 103(a) as being unpatentable over *Ballantyne* in view of *Cohn* and further in view of *Spaur*; and claims 4, 6, 33, 35, 48, 50, and 54 under 35 U.S.C. § 103(a) as being unpatentable over *Ballantyne* in view of *Cohn* and *Ishizuka*, and further in view of *Spaur* because a prima facie case of obviousness has not been established with respect to these claims.

Ballantyne and *Cohn* do not teach, suggest, or render obvious independent claims 1, 3, 30, 32, and 51 for at least reasons discussed above. In addition, *Ishizuka* and *Spaur* fail to cure the above-noted deficiencies of *Ballantyne* and *Cohn*. Thus, independent claims 1, 3, 30, 32, and 51 and their dependent claims 4, 6, 11, 14, 17, 33, 35, 40, 43, 46, 48, 50, and 52-54 are allowable over the cited references.

Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1-17 and 30-54 is respectfully requested and deemed appropriate.

In view of the foregoing, Applicants respectfully request that the rejections be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 31, 2009

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